



**U.S. Department of Justice**  
Office of Information Policy  
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1425 New York Avenue, NW  
Washington, DC 20530-0001

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Telephone: (202) 514-3642

Michael Best  
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[33846-76551378@requests.muckrock.com](mailto:33846-76551378@requests.muckrock.com)

Re: Appeal No. DOJ-AP-2018-005611  
Request No. 1369226  
CDT:RNB

**VIA: Email**

Dear Michael Best:

You appealed from the action of the Federal Bureau of Investigation on your Freedom of Information Act request for access to records describing the email system used by the FBI, including the procedures and methods for performing searches of the email system. I note that your appeal concerns the FBI's full denial of your request. Please be advised that this Office was closed due to a lapse in funding appropriations between December 22, 2018 and January 25, 2019, which resulted in a delay in responding to your appeal.

After carefully considering your appeal, and as a result of discussions between the FBI personnel and this Office, I am remanding your request in part to the FBI for an additional search for responsive records. If the FBI locates releasable records, it will send them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by the FBI. If you would like to inquire about the status of this remand, please contact the FBI directly. I am otherwise affirming, on modified grounds, the FBI's action on your request.

As to any user manuals relating to email searches conducted by the FBI, such as the user manual for Microsoft Outlook, such information is provided by the vendors of the software and would not constitute agency records. These private companies do not relinquish control over their user manuals when they provide them for agency use. See *Burka v. HHS*, 87 F.3d 508, 515 (D.C. Cir. 1996) (setting forth the criteria for determining agency "control" of a record (quoting *Tax Analysts v. DOJ*, 845 F.2d 1060, 1069 (D.C. Cir. 1988))).

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

3/15/2019

X 

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Sean R. O'Neill

Chief, Administrative Appeals Staff

Signed by: SEAN O'NEILL